

INFORMATION PAPER

Subj: EXEMPTIONS FROM IMMUNIZATION REQUIREMENTS AND COMMAND'S ABILITY TO ADMINISTRATIVELY SEPARATE MARINES FOR IMMUNIZATION REFUSAL

Ref: (a) MCO 1900.16 CH 2, Separation and Retirement Manual (MARCORSEPMAN), 15 Feb 19
(b) DODI 6205.02, DOD Immunization Program, 23 Jul 19
(c) BUMEDINST 6230.15B, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, 7 Oct 13
(d) MCO 1730.9, Accommodation of Religious Practices in the Marine Corps, 12 Jul 21
(e) U.S. Navy Regulations 1990 W/CH 1

Encl: (1) NAVMC 10274 Administrative Action Form
(2) Chaplain Interview Checklist Template
(3) Chaplain Memorandum for the Record Template
(4) Draft rehabilitative 6105 counseling
(5) Draft processing 6105 counseling

1. Purpose. To provide a shared understanding of the relevant rules, regulations, orders, and exemptions that apply to Marines required to obtain immunizations as well as to provide information on how to process Marines who refuse to obtain required immunizations for involuntary administrative separation.

2. BLUF.

a. Marines can potentially obtain an exemption from required immunizations. The Department of Defense (DoD) allows for two types of exemptions: Medical or Administrative. Administrative exemptions include (1) separation or retirement, (2) fewer than thirty days of service remaining, or (3) religious accommodation.

b. In order to obtain an exemption for a religious accommodation, the Marine must submit his or her request using the NAVMC 10274 AA form and must be interviewed by a unit Chaplain. The interviewing chaplain shall assess the sincerity and the nature (i.e., conscience, moral principles, or religious beliefs) of the held belief.

c. If a military policy, practice, or duty substantially burdens a Marine's sincerely held beliefs (conscience, moral principles, or religious beliefs), the cognizant Adjudication Authority can deny the Marine's accommodation request only if the Adjudication Authority determines: (1) the military policy, practice, or duty is in furtherance of a compelling government interest; and (2) the military policy, practice, or duty is the least restrictive means of furthering that compelling governmental interest. Required immunizations constitute a "compelling government interest."

d. The Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) is the Adjudication Authority on requests for exemptions to medical practices, to include exemptions to immunization requirements. Requests originating from outside the United States must be forwarded to the DC M&RA within 60 days of receipt of the request. DC M&RA review and final determinations for these requests must be made within 60 days of receipt of the request.

e. Commands may administratively separate enlisted Marines for refusing inoculations. Commands

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can do so by (1) processing the Marine for refusing inoculations, pursuant to paragraph 6203.7.e of reference (a), and/or (2) ordering the enlisted Marine to obtain their inoculation and then processing the Marine for commission of a serious offense, for violation of Article 92 (Failure to Obey Order or Regulation), pursuant to paragraph 6210.6 of reference (a).

3. Exemptions from immunization requirements. Under reference (b), the DoD immunization program is intended to protect the total force from naturally occurring diseases and biological threats. Per reference (c), active duty personnel will be immunized.¹ However, reference (c) allows for two types of exemptions to the immunization requirement: Medical or Administrative.²

a. Medical Exemptions. Per paragraph 2-6(a) of reference (c), a medical exemption "includes any medical contraindication relevant to a specific vaccine or other medication." Medical exemptions will be addressed and approved or denied through the Marine's primary care provider and appropriate medical personnel. Health care providers will determine the exemption based on the health of the vaccine candidate and the nature of the immunization under consideration, such as the "underlying health condition of the vaccine candidate, evidence of immunity based on serologic tests, documented infection, or if an individual's clinical case is not readily definable." No command action is required in approving medical exemptions. Commanders should, however, be aware of any approved medical exemption in order to properly maintain and report the medical readiness of their unit(s). Medical exemptions will be revoked by medical staff when no longer necessary.

b. Administrative Exemptions. The three types of administrative exemptions are (1) separation or retirement³, (2) fewer than thirty days of service remaining⁴, or (3) religious accommodation. As the bulk of administrative exemption requests are for religious accommodations, the remainder of this section will focus on the administrative requirements in order to obtain a religious accommodation exemption.

(1) Religious Accommodations

(a) Requests

(i) Marines must submit requests for religious accommodations using the NAVMC 10274 AA form, see enclosure (1).⁵ Religious accommodation requests must include the nature of the accommodation requested, duration of the request, the religious or sincerely held spiritual basis for the request, and the faith group or belief system identified with the request.⁶

(ii) The Marine must be interviewed by a unit Chaplain prior to the Marine submitting his or her religious accommodation request.⁷ The Chaplain will record and analyze the Marine's request

¹ "During military service, active duty personnel will receive or be up-to-date on adult routine immunizations" and will receive additional geographically specific vaccines. See paragraph 3-2(a-e).

² See paragraph 2-6.

³ "Within 180 days before separation or retirement, Service personnel may be exempt from deployment (mobility) immunizations if... (a) [t]hey are not currently assigned, deployed, or scheduled to perform duties in a geographical area where an immunization is indicated"; or "(b) [t]he commander has not directed immunization because of overriding mission requirements." Additionally, the member must have approved retirement or separation orders and are not continuing duty in the reserve component. See Paragraph 2-6.b.1 of reference (c).

⁴ "Applies to civilian employees and contractor personnel who will leave a permanent (other than OCONUS deployments) assignment subject to immunization within 30 days or fewer." Paragraph 2-6.b.2 of reference (c).

⁵ Section 4.a.2 of reference (d).

⁶ Section 4.a.3 of reference (d).

⁷ *Id.*

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using the templates found in enclosures (2) and (3).⁸ In so doing, the interviewing Chaplain will assess the sincerity and the nature (i.e., conscience, moral principles, or religious beliefs) of the Marine's belief.⁹

(iii) Marines submitting a religious accommodation request must continue to comply with the policy, practice, or duty from which an accommodation has been requested until informed that the request has been approved by the appropriate authority unless exceptional circumstances exist.¹⁰ The cognizant Appellate Authority may determine whether a particular circumstance qualifies as an exceptional circumstance.¹¹ Commands should consult with the Staff Judge Advocate before ordering a Marine to receive an inoculation while that Marine has a pending religious accommodation request.

(b) Adjudication and Appellate Authorities

(i) SPCMCA as Adjudication Authority. Religious accommodation requests that can be approved/denied consistent with DoD, Department of Navy (DoN), and Marine Corps Orders and regulations will be reviewed and acted upon by the first special court-martial convening authority (SPCMCA) in the requestor's chain of command.¹²

(ii) DC M&RA as Adjudication Authority. Religious accommodation requests that require waiver of DoD, DoN, or Marine Corps Orders and regulations will be submitted to DC M&RA via the first general court-martial convening authority (GCMCA) in the requestor's chain of command.¹³ DC M&RA makes determinations on requests for exemptions to medical practices, to include exemptions to immunization requirements.¹⁴

(iii) Appellate Authority. The appellate authority for religious accommodation requests that can be approved consistent with DoD, DoN, and Marine Corps Orders and regulations is the first GCMCA in the requestor's chain of command.¹⁵ The Appellate Authority for religious accommodation requests that require waiver of DoD, DoN, or Marine Corps Orders or regulations is the Commandant of the Marine Corps (CMC).¹⁶

(c) Standard of Review. The Marine Corps will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on a compelling government interest.¹⁷ If a military policy burdens a Marine's sincerely held belief, the Adjudication Authority can only deny the accommodation request if the Adjudication Authority determines: (1) the military policy, practice, or duty is in furtherance of a compelling government interest; and (2) the military policy, practice, or duty is the least restrictive means of furthering that compelling governmental interest.¹⁸

(i) The Marine Corps requires immunizations for all Marines based upon its

⁸ Section 4.f.3 of reference (d).

⁹ *Id.*

¹⁰ Section 4.a.2 of reference (d).

¹¹ *Id.*

¹² Section 4.b of reference (d).

¹³ *Id.*

¹⁴ Section 4.f.1 of reference (d).

¹⁵ Section 4.c.1 of reference (d).

¹⁶ *Id.*

¹⁷ Section 2 of reference (d).

¹⁸ *Id.*

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compelling interest in military readiness and the health and safety of the Total Force.¹⁹ The Marine Corps considers immunizations an important component of individual and unit medical readiness as Marines may be called upon to operate in environments and under conditions that increase their exposure and susceptibility to illness.²⁰ Additionally, mission accomplishment may require that Marines be immunized to protect against disease due to increased exposure potential or to conform with international health regulations incident to foreign travel or unit deployment.²¹

(ii) Adjudication Authorities must demonstrate that their determinations consider whether the request is based on a sincerely held religious belief and whether there is a less restrictive alternative means of meeting the compelling government interest while providing for a religious accommodation.²²

(iii) Adjudication Authorities must consider every request on a case-by-case basis.²³ In making their decision, the Adjudication Authority may consider and annotate the following non-exclusive factors: (1) impact to unit readiness; (2) adverse impacts to health and safety; (3) whether the unit has previously granted similar accommodations; (4) whether the Marine can use less restrictive alternate means to fulfill the request.²⁴

(d) Approval/Denial Timeline

(i) Adjudication Authority review and final determinations for requests that can be approved consistent with existing orders, regulations, and policies must be made within 30 business days of receipt of a request that meets the minimum requirements under reference (d).²⁵

(ii) Adjudication Authority review and a final determination for requests originating from outside the United States or for Reserve Component Service Members not on active duty must be made within 60 days of receiving a request that meets the minimum requirements under reference (d).²⁶

(iii) Requests that require the waiver of otherwise applicable orders, regulations, and policies, must be forwarded to DC M&RA within 30 days of receipt of a request that meets the minimum requirements under reference (d).²⁷ Requests originating from outside the United States or for Reserve Component Service Members not on active duty must be forwarded to the DC M&RA within 60 days of receipt of a request that meets the minimum requirements under reference (d).²⁸ DC M&RA review and final determinations for these requests must be made within 60 days of receipt of a request.²⁹

(iv) The individual requesting the accommodation must be informed of the final determination within 5 business days of final action.³⁰

¹⁹ Section 3.f.1 of reference (d).

²⁰ *Id.*

²¹ *Id.*

²² Section 4.b.2 of reference (d).

²³ *Id.*

²⁴ Section 4.b.3 of reference (d).

²⁵ Section 4.b.1.a of reference (d).

²⁶ *Id.*

²⁷ Section 4.b.1.b of reference (d).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

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4. Administrative processing for inoculation refusal. Reference (a) empowers Commanders³¹ to process Marines for administrative separation if they refuse inoculations. The general basis for separation is "convenience of the government" and the specific basis is "refusal of medical treatment, refusal of inoculation."

a. Background

(1) Paragraph 6203 of reference (a) provides a Marine may be separated for convenience of the government and characterization of service should be honorable, general (under honorable conditions), or uncharacterized, as appropriate pursuant to the rules outlined in paragraph 1004 (characterization of service) and Table 6-1 of reference (a).

(2) Paragraph 6203.7 of reference (a) provides a Marine may be separated for refusing medical treatment if that refusal interferes with duty. The commander must determine if the refusal is "reasonable" or "unreasonable" and warrants separation based upon the situation and the considerations discussed below. Examples of "reasonable" refusal includes, but is not limited to, documented medical exemptions or then existing religious exemptions or accommodations. Commanders should consult medical personnel, individual service record books, and training jackets for possible exemptions prior to concluding whether or not a refusal is "reasonable" or "unreasonable."

(3) Paragraph 6203.7.e of reference (a) provides that Marines shall submit to required immunizations according to reference (e). Chapter 11, Section 4, Article 1144 of reference (e) provides that persons in the naval service shall permit such action to be taken to immunize them against disease as is prescribed by competent authority³².

(4) The medical evaluation board and PEB procedures described in paragraph 6203.7.b of reference (a) are not required for Marines who refuse inoculation.

(5) Separation processing may not be initiated until the Marine is counseled concerning deficiencies and afforded a "reasonable opportunity" to overcome those deficiencies as reflected in appropriate counseling and personnel records. Counseling should be in accordance with paragraph 6105.3.e.(1) of reference (a), and be in the form of a "rehabilitative" 6105 counseling.

b. Discussion

(1) The process for administrative separation of a Marine in accordance with paragraph 6203.7.e will begin with the Marine's initial refusal after being ordered to report to medical for inoculation. Upon refusal, the Commander will determine if such refusal was "reasonable" or "unreasonable." This analysis will involve consultation with medical personnel, review of the Marine's service record book and training jacket, and consultation with the cognizant Staff Judge Advocate.

(2) If the Commander determines the Marine's refusal of inoculation to be "unreasonable," the Commander will issue a "rehabilitative" 6105 counseling (enclosure (4)) to the Marine and provide a

³¹ Pursuant to reference (a), Commanders are those officers exercising special court-martial convening authority.

³² Although not specifically defined by reference (e), the term "competent authority" generally refers to those having authority to issues orders and regulations and includes, but is not limited to the President or Secretary of Defense, of Homeland Security, or of a military department, and those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof which are issued by: (i) an officer having general court-martial jurisdiction; (ii) a general or flag officer in command; or (iii) a commander superior to (i) or (ii). See Article 92(1), UCMJ discussion section.

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"reasonable opportunity" for the Marine to correct the deficiency (i.e. agree to receive the inoculation). A "reasonable opportunity" is not a set period of time, but is often interpreted to be a period no sooner than 15-30 days.

(3) If the Marine has not corrected the deficiency by receiving the required inoculation after the "reasonable opportunity" has passed, a "processing" 6105 counseling (enclosure (5)) should be issued to the Marine by the Commander, pursuant to paragraph 6105.3.e.(2) of reference (a). After a Marine has received the "processing" 6105 counseling, they will be issued an administrative separation notification.

(4) A Marine with less than six (6) years of active service may be processed without an administrative board and receive a general (under honorable conditions) or honorable characterization of service when separated under convenience of the government.

(5) A Marine with six (6) or more years of active service has the right to an administrative board, but may elect to waive the board. The Marine may receive a general (under honorable conditions) or honorable characterization of service when separated under convenience of the government.

Prepared by:	(b)(6)	Deputy Staff Judge Advocate, 3d Marine Division
Approved by:	(b)(6)	Staff Judge Advocate, 3d Marine Division

CHAPLAIN INTERVIEW CHECKLIST TEMPLATE

Requester:			Interview Date:		
Name:			Chaplain Interviewer:		
Phone:			Phone:		
Email:			E-mail:		
Command:			Chaplain's Command:		
Interview Preliminaries					
Yes	No	N/A			
			Chaplain reviewed policy and doctrine on religious accommodation and the policy for which the requestor is seeking accommodation.		
			Requester was notified that the interview is not confidential and will be used to advise the command.		
			Chaplain explained to the requester that confidential support can be received from another chaplain.		
			Requester has been granted a waiver for this practice previously.		
Type of Waiver Requested					
Yes	No	N/A			
			Uniform standards		
			Grooming standards		
			Immunization requirements		
			DNA sampling		
			Other (Please describe):		
Interview					
Yes	No	N/A			
			Requester's beliefs (conscience, moral principles, or religious beliefs) seemed honestly and sincerely held using one or more of the following factors:		
			1. Requester was credible (consistently keeps tenets, practices, etc.).		
			2. Requester's demeanor and pattern of conduct are consistent with the request.		
			3. Requester participates in activities associated with the belief(s).		
			4. Other persons supporting the claim are credible.		
			5. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.		
			Alternate means of accommodating the practice were explored in the interview.		
Process Checklist					
Yes	No	N/A			
			Chaplain has prepared a memorandum documenting the interview.		
			Chaplain reviewed memorandum with requester and provided a copy.		
			Chaplain submitted the memorandum and this document to the commanding officer via chain of command.		
			Chaplain referred requester to command to process request.		

CHAPLAIN MEMORANDUM FOR THE RECORD TEMPLATE

Date

From: [Chaplain's rank and name], CHC, USN
To: [Commanding Officer of requester]

Subj: REQUEST FOR A WAIVER OF POLICY TO ACCOMMODATE
PRACTICE BASED ON RELIGIOUS BELIEF ICO [REQUESTER'S
RANK, NAME]

Ref: (a) DoDI 1300.17
(b) SECNAVINST 1730.8B

1. (Requester's rank and name) has submitted a request for accommodation of a religious practice. Per MCO 1730.9, I interviewed the requester on (date). I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that referral for confidential chaplain support was available.

2. Nature of the request. (Provide a narrative summary of the request for religious accommodation and whether or not the requestor has previously had this or any other related request approved or denied). The narrative summary should also identify the beliefs are derived from a matter of conscience, rooted in moral principles, or religious beliefs.

3. Basis. (Identify the religious beliefs on which the accommodation request is based and provide a professional and objective opinion regarding the religious importance of the request to the member.

4. Alternate Means. (Indicate alternate means of meeting the request).

5. Sincerity. (Assess the sincerity of the requester. The memorandum should focus on the sincerity of the member's personal religious beliefs, including the information provided during the interview).

6. My contact information is (telephone number and e-mail address).

[Signature]

Copy to:
(Rank and name of requester)